

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of O'NESHA ELONDA COBBS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ENOS T. COBBS,

Respondent-Appellant,

and

YOLANDA SHANIKA WILSON, ANDRE
TYRONE RAMBUS, and GEORGE FOREMAN,

Respondents.

UNPUBLISHED

April 15, 2004

No. 251524

Wayne Circuit Court

Family Division

LC No. 01-400821

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that clear and convincing evidence established three statutory grounds for termination. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(J). Respondent-appellant failed to contact either the minor child or petitioner for a period as long as five months in 2002, thereby effectively deserting the child pursuant to subsection (3)(a)(ii). The fact that petitioner poorly serviced this case did not relieve respondent-appellant of his responsibility to plan for the minor child. Moreover, the court's criticism of petitioner's efforts when it twice dismissed prior petitions did not amount to a settled principle of law that bound all parties under the principle of stare decisis. In addition, respondent-appellant had not rectified the adjudicating conditions since he was currently in prison and had no contact with the minor child. He also had not provided proper care or custody. His lack of efforts to contact the child or comply with the court-ordered treatment plan provided sufficient evidence for the trial court to find that there was no reasonable expectation that the

adjudicating conditions would be rectified, or that he would be able to provide proper care and custody, within a reasonable time considering the child's age.

The trial court did err in ordering termination upon the basis of subsection (3)(h) because the evidence established that respondent-appellant would be released from prison within six to nine months. However, this error was harmless because the trial court properly based termination of respondent-appellant's parental rights on three other statutory grounds. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).¹

Lastly, the evidence clearly showed that respondent-appellant had not been in contact with the child since late 2001. Although there was some testimony the child would initially suffer from the termination of parental rights, this same witness recommended such termination. Termination was not contrary to the child's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski

¹ Contrary to respondent-appellant's argument on appeal, the trial court did not rely on subsection (3)(j) to terminate his rights. The court's reference to that subsection plainly pertained only to the child's mother.